U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15980558

Date: JUL. 23, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a gymnastics coach, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Nebraska Service Center Director concluded that the Petitioner qualified for classification as an individual of exceptional ability and that he is well positioned to advance his proposed endeavor. While the evidence supported a finding that the proposed endeavor has substantial merit, the Director determined that the evidence did not establish that the endeavor is of national importance, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner reasserts his eligibility for a national interest waiver and argues that the Director erred in the decision. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attomey General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director found that the Beneficiary qualifies as an individual of exceptional ability by meeting at least three of the six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii). We agree. The petition, however, cannot be approved.

Despite the Director's request for evidence (RFE), which informed the Petitioner that it must submit either an "Application for Permanent Employment Certification (ETA 9089), Parts J, K, and L or an Application for Alien Employment Certification (Form ETA-750 Part B Statement of Qualifications of Alien)," the Petitioner submitted neither form in its RFE response nor on appeal. For this reason alone, the petition cannot be approved.

The remaining issue to be determined is whether the Beneficiary qualifies for a national interest waiver under the analytical framework set forth in Dhanasar. Since 2016, the Beneficiary has been working as a lead gymnastics coach at [redacted] where he reports directly to the head coach and owner, assisting her in "providing training direction, encouragement, motivation, and nutritional advice to prepare athletes for competitive events." The Petitioner reported that the Beneficiary's original training methods have helped a junior elite female gymnast to achieve better career methods through the use of the "giant swing," a technique which is typically used by male gymnasts, but which the Beneficiary transferred to her training, thereby enabling the potential for her to attain higher difficulty scores.[4]

In the initial filing, the Petitioner indicated that the Beneficiary's proposed endeavor is to "work as a gymnastic coach specialized in training elite female gymnasts." In its RFE response, the Petitioner clarified that in addition to his previously stated duties, the Beneficiary will also assist the head coach to organize, demonstrate skills, and conduct practice sessions for choreography; adjust coaching techniques based on the strengths and weaknesses of athletes; plan and direct physical conditioning;

[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).
[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] The Petitioner cites the "giant swing" technique several times and relies on it as one of the few concrete examples of the Beneficiary's coaching impact. We conclude, however, that even if this technique made a broader impact in the gymnastics field, a conclusion not supported by the record, the evidence would not support a finding of a sustained impact. Rather, the "giant swing" appears to be a single, isolated example of the Beneficiary's coaching impact.

enforce the safety rules and regulations; and keep track of changing gymnastic rules, techniques, and regulations.

The Director determined that the proposed endeavor has substantial merit, but that the record did not establish the proposed endeavor's national importance. Specifically, the Director noted that the record did not establish: (1) the national benefit of the proposed endeavor; (2) the importance of gymnastics to the nation; (3) that the endeavor has significant potential to employ U.S. workers or has other substantial positive economic effects; or that (4) the proposed endeavor impacts a matter of national importance, is the subject of national initiatives, or will enhance societal welfare or cultural or artistic enrichment. We agree. To evaluate whether the Beneficiary's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. We conclude that while his endeavor does have substantial merit, the record does not establish by a preponderance of the evidence that the Beneficiary's coaching would impact the field of gymnastics or sports more broadly, as opposed to being limited to the specific gymnasts and workplace he serves. In Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. See Dhanasar, 26 I&N Dec. at 893. Here, the Petitioner improperly relies on the prospective impact the Beneficiary might have on the gymnasts he coaches as sufficient to meet the first Dhanasar prong.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. at 889. We further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. As more fully explained below, the Beneficiary's coaching may impact the individuals he coaches, but even considering a national shortage of gymnastics coaches, the Petitioner has not persuasively established how the Beneficiary's activities will have a broader impact.

Regarding his proposed endeavor, the Petitioner has not identified any elite gymnasts that the Beneficiary currently coaches or any specific gymnasts he plans to coach in the future. While we acknowledge the Petitioner's evidence concerning the Beneficiary's past work with certain gymnasts of national and international achievement, we do not find sufficient evidence in the record explaining which specific athletes the Beneficiary plans to coach as part of his proposed endeavor.[5] A letter from the Beneficiary's coaching colleague, [redacted] states that the Beneficiary's work will improve *children's* gymnastics. While we acknowledge that gymnasts may be young, even at the elite level, the Petitioner has not clearly defined the type of gymnast the Beneficiary will work with in his proposed endeavor. [redacted]'s statement casts confusion upon the demographic of gymnast the Beneficiary intends to coach.

The Petitioner provided a printout from its website featuring the head coaches at [redacted] however the Beneficiary is not featured as one of these coaches nor is his name or coach profile highlighted elsewhere on the Petitioner's website. If the Beneficiary's coaching had generated an impact in the field of gymnastics at a level commensurate with national importance, we

[5] In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. at 889.

would expect the Petitioner to broadly advertise the Beneficiary's coaching availability in order to attract positive attention and business for the Petitioner. The lack of publicity for the Beneficiary's coaching services suggests that the Beneficiary's coaching has not reached a level of national interest such that the larger gymnastics community is aware of him or his "top-notch" and "ingenious" coaching methods. In our review of the Petitioner's website, we observe most of the offered gymnastics classes target small children and that the Petitioner places far less emphasis on elite gymnastics training.[6] Based upon this information, we question whether the Beneficiary will primarily be engaged in coaching elite gymnasts, as opposed to young children who are simply enrolled in gymnastics activities for fun. This is important, as the coaching of young children in a noncompetitive and local setting may have even less national importance than coaching elite athletes who may rise to gain national or international acclaim.[7]

The Petitioner submitted numerous letters of recommendation in which the authors praise the Beneficiary's background, education, experience, and abilities in the field.[8] Many letters contain vague and general statements, such as that the Beneficiary brought "the most scientifically valid training approaches" and offered "uniquely bold approaches." The author of such statements offered little explanatory detail for these claims and we have little corroborating evidence to support them. None of the letters includes sufficient details substantiating how the Beneficiary's coaching has made any impact in the field of gymnastics or sports as a whole. To illustrate, [redacted] a friend of the Beneficiary and also his coaching competitor, offers an insufficient basis to conclude that the Beneficiary has made an impact in the field overall. While [redacted] plans to incorporate the Beneficiary's "giant swing" technique for his gymnasts in the future, there is little evidence to suggest that [redacted] has already done so or that such implementation would have any effect at all beyond the individual gymnasts who use the technique. Moreover, even if [redacted] had incorporated the technique with success, this would not establish the broader impact of the Beneficiary's coaching, as [redacted] personally knows the Beneficiary and serves as the sole example of the Beneficiary's coaching impact beyond the Beneficiary's own gymnasts and employer.

Likewise, [redacted] the [redacted] at USA Gymnastics,[9] appears unfamiliar with the Beneficiary's work, despite his/her review of materials relating to the Beneficiary's coaching and the Beneficiary's longstanding membership in USA Gymnastics.[10] This evidence strongly suggests that the Beneficiary's coaching has not impacted gymnastics at a national importance level. While [redacted] claims that the Beneficiary's coaching will serve USA Gymnastics, there is little indication that it has and even if such impact had been reached, service to USA Gymnastics alone would be insufficient to establish national importance. Similarly, although some of the gymnasts the Beneficiary has coached in the past have been successful at an elite level, the Petitioner has not explained how this individual success establishes the proposed endeavor's national importance.

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[6] The class schedule and various website pages advertise classes primarily geared toward toddlers and grade school children. For further information, please visit https:/[redacted] (last visited July 23, 2021).

[7] Even assuming these gymnasts achieve an elite level of success, the Petitioner would still need to establish how the Beneficiary's coaching of the gymnasts has national importance.

[8] The Petitioner submitted six letters in the initial filing and four additional letters in its RFE response. While we do not discuss each letter individually, we have carefully reviewed and considered each one.

[9] USA Gymnastics is the national governing body for the sport in the United States.

[10] The conclusion that the Beneficiary's coaching is not known in the gymnastics community in a manner suggestive of national interest is further supported by the fact that even after a review of materials relating to the Beneficiary, the author of the letter refers to the Beneficiary using the wrong gender pronoun.

[redacted] the owner of a competing gymnastics training company, submitted a letter suggesting that the Beneficiary's methods and expertise are primarily due to his national origin, which speaks more to the qualities of the Beneficiary than the national importance of his proposed endeavor. The Petitioner's expertise relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under Dhanasar's first prong. [redacted]'s claim that the Beneficiary's reputation is known in the gymnastics community are accompanied by few supporting details to substantiate such an assertion. Although the letter states the Beneficiary has a willingness to coach other coaches, which may suggest a potential for broader impact, the Beneficiary's proposed endeavor contains no indication that he intends to coach other coaches. Moreover, [redacted]'s letter contains numerous grammatical errors that diminish the probative value of the letter and the assertions contained therein because it suggests the letter is not professional in nature or written by someone with a credible reputation in the field.

Overall, we note that several of the letters repeat exact phrases that the Petitioner provided in its initial cover letter on behalf of the Beneficiary. For instance, the Beneficiary's former pupil, [redacted] describes his experience of being coached by the Beneficiary using the exact language the Petitioner used in its cover letter. The letter from [redacted] the Beneficiary's friend and coaching competitor, describes the Beneficiary's "giant swing" technique using several identical sentences that the Petitioner previously provided. The portions of identical language contained in the letters diminishes the probative value of the letters. We cannot ascertain whether the Petitioner recycled language from the letters to write its cover letter or if the letters themselves were not independently written by the stated authors.[11] This, combined with the vague and unsubstantiated claims in the letters, do not persuasively establish the national importance of the Petitioner's proposed endeavor. While we acknowledge the Petitioner's claims and the authors' letters, the record does not indicate that the Beneficiary's ideas or approaches have been implemented such that the broader impact of his work is established. For instance, the Petitioner has not shown benefits to the gymnastics field as a whole as a result of the Beneficiary's techniques. If anything at all, the benefits have accrued to the Petitioner or an individual gymnast. The Petitioner has not shown benefits to the regional or national economy resulting from the Beneficiary's coaching work, and certainly none that reaches the level of "substantial positive economic effects" contemplated by Dhanasar. Dhanasar, 26 I&N Dec. at 890. As the Director stated, the record does not support a finding that the endeavor has potential to employ U.S. workers, let alone at a level commensurate with national importance.

On appeal, the Petitioner argues that the Director erred in the national importance determination because the Beneficiary's skills would impact other coaches in the field and would address the national shortage of elite gymnastics coaches. However, as explained above, the relevant question is not the importance of the industry or profession in which the individual will work, but on the "the specific endeavor that the foreign national proposes to undertake." Id. at 889. Even if we consider a national shortage of coaches as a persuasive argument, the Petitioner has submitted little evidence to substantiate how the Beneficiary's coaching would address a national shortage. Further, the

[11] In a recent case concerning an extraordinary ability determination, the court found that identical language in letters "suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content." *Hamal v. U.S. Dep't of Homeland Security*, No. 19-2534, slip op. at 8, n.3 (D.D.C. June 8, 2021).

Beneficiary's expertise pertains to the second prong of the Dhanasar framework. Although the Petitioner claims that the Beneficiary's proposed endeavor adds tremendous value to the U.S. gymnastics field, the Petitioner has not persuasively established its claim. The Director specifically stated in its RFE that letters alone are insufficient to establish eligibility under this prong and even with this notice, the Petitioner has provided little corroborating evidence to supplement these letters. While the individual gymnasts and the workplaces the Beneficiary serves certainly are valuable, this fact alone does not discharge the Petitioner's burden to establish the national or global implications of the Beneficiary's work. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.[12]

III. CONCLUSION

The Petitioner has demonstrated that the Beneficiary qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act. However, as the Beneficiary has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[12] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining appellate arguments. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).